

Exhibit 7
(Unsealed)
(Previously Filed Under Seal as Dkt. 434)

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY

2 UNITED STATES DISTRICT COURT
3 DISTRICT OF MINNESOTA

4 -----X

5 FAIR ISAAC CORPORATION,

6 Plaintiff,

7 v.

Court File No.
16-cv-1054 (WMW/DTS)

8 FEDERAL INSURANCE COMPANY
9 and ACE AMERICAN INSURANCE
10 COMPANY,

11 Defendants.

12 -----X

13 ***CONFIDENTIAL - ATTORNEYS' EYES ONLY***

14 VIDEOTAPED DEPOSITION OF RUSSELL SCHREIBER

15 New York, New York

16 Wednesday, October 24, 2018

17 8:52 a.m.

18

19

20

21

22

Reported by:

23 LYNN VAN DEN HENDE

CRR, RMR, RPR, CSR-NY, CSR-CA, CSR-IL

24 JOB NO: 39215

25

EXHIBIT

7

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 Q. And what was the working
3 relationship between you two?
4 A. So Mike initially was a -- I don't
5 remember what the title was, but he was
6 basically a sales -- not a sales -- but a
7 customer service person. I should -- I
8 should remember the title though.
9 But his job was to work with
10 clients in my sector and make sure that we
11 were delivering on the value that we said,
12 that we would take -- if there were support
13 problems that weren't getting answered from
14 the different product lines, he'd be kind of
15 the catchall guy to make sure that -- that
16 FICO didn't drop the ball.
17 Where maybe if they had a -- like
18 a newer product, if they had another product
19 and the product team wasn't being responsive
20 to support requests, they'd call -- you know,
21 the client might call Mike up. And Mike
22 would help chase down internal, internal
23 stuff.
24 So he was initially a customer
25 support person. And then --

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2 Q. And -- yeah, go ahead.
3 A. And then over the years he was
4 eventually promoted to client partner. And
5 he became responsible for a territory.
6 Q. Do you recall when he became
7 client partner for Chubb?
8 A. No.
9 But it would have been -- I do
10 not. But '12, 2012 maybe, '14, like that.
11 Q. And when he stepped into the role
12 of client partner at Chubb, he reported to
13 you, is that right?
14 A. Ultimately, yes.
15 There was a person before Mike
16 though. You have Ian Brodie in there, right?
17 Q. Okay.
18 A. I guess you don't.
19 Q. Ian Brodie was the client partner
20 for Chubb?
21 A. Right. So when I got promoted to
22 take over the -- to be responsible for the
23 United States, Ian became the client partner
24 for Chubb.
25 And that was two-plus years or so.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 Q. Okay. And so --
3 A. And then after Ian left, then Mike
4 became client partner for Chubb.
5 Q. And so whoever was acting as
6 client partner for Chubb, Ian and then Mike,
7 would have reported to you?
8 A. That's correct.
9 Q. And would you characterize that
10 working relationship as a close working
11 relationship?
12 A. I don't know how I would -- it was
13 a good working relationship.
14 I don't know what "close" means.
15 I don't know you're looking for.
16 Q. Did you interact with Mike when he
17 was client partner for Chubb every day about
18 Chubb, every week?
19 A. No, no. But we spoke weekly on
20 everything that he was responsible for.
21 And Chubb sometimes wouldn't be a
22 topic for maybe months on end.
23 Q. Was Chubb one of the bigger
24 accounts that you and Mike had responsibility
25 for?

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 A. No.
3 I don't know how you mean
4 "bigger." So why don't you tell me what you
5 mean by bigger.
6 Q. Okay. Would you say it was in the
7 top 10 percent in terms of size of accounts?
8 A. So again, what do you mean? Size
9 by what measure?
10 Q. The amount of revenue that the
11 relationship generated for FICO.
12 A. No, no.
13 Q. Okay.
14 A. So Chubb had -- it was spiky.
15 So we had initial sales. Then we
16 had some services. Then we didn't do much
17 for a while. Then we did a lot.
18 And then it was up then down over
19 time as the ebb and flow, their business
20 needs ebbed and flowed.
21 Q. How would you compare the amount
22 of revenue that FICO generated from Chubb
23 over the ten-year period that FICO did
24 business with Chubb?
25 A. Perfectly fine.

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1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 Q. Fine, middle of the road?
3 A. I wouldn't put it -- I wouldn't
4 put it in a bucket. I just don't know.
5 Q. Okay.
6 A. The thing that was great about
7 Chubb was we had a great relationship. They
8 could count on us. If I need a reference, we
9 could count on them.
10 We had a great history together.
11 Q. But they were not viewed by you or
12 anyone else at FICO as one of the bigger
13 clients?
14 A. As a big revenue generator year
15 over year over year, no.
16 But certainly as a name brand and
17 a great client who we had a great track
18 record with.
19 Q. Showing you what's been marked as
20 Exhibit 115.
21 (Exhibit 115, Email dated
22 11/14/2008, with attachment, Bates
23 FICO0002101 through FICO0002273, marked
24 for identification.)
25 A. Okay.

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1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 Q. Take a look at that. And let me
3 know when you're ready.
4 (Document review.)
5 A. Oh, John Finnegan, wow. I forgot
6 about these guys.
7 Okay. So this looks to me you're
8 trying to give me the license agreements that
9 we've already looked at in 110, plus an
10 annual report from '07?
11 Q. Yes.
12 A. Okay.
13 Q. That's what I believe is included
14 in Exhibit 115.
15 MR. HINDERAKER: Are you okay?
16 A. Okay. Yep.
17 Q. Okay. And on the first page Mike
18 Sawyer states to you, with the subject line
19 "Chubb:"
20 "Russ - I've attached 4 PDFs. The
21 first three are the SLSA and subsequent
22 expansion amendments. The fourth is their
23 2007 annual report."
24 A. Right.
25 Q. Take a look at page 26 and 27 of

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1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 the annual report.
3 A. Okay.
4 Q. Do you recall what this meeting
5 was being called about?
6 A. I do not.
7 Q. If you take a look at page 26 and
8 27 --
9 A. Yep.
10 Q. -- do you recall what it is that
11 he was finding significant in those pages?
12 A. No.
13 Q. Was the annual report something
14 that you had reviewed at times in the past?
15 A. I would have. It's conceivable I
16 would have, sure.
17 Know your customer, right?
18 Q. If you look at page 27, which is
19 one of the pages that he pointed you to --
20 A. Yep.
21 Q. -- you see there that the net
22 premiums written for 2005 was 12.2 billion,
23 correct?
24 A. Right.
25 Q. And is it your understanding that

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1 **CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber**
2 that is for essentially the Chubb groups
3 of -- the Chubb group of companies that are
4 subject to this annual report?
5 A. I don't know. I'm on page 27. I
6 don't know.
7 Do you want me to read the annual
8 report and tell you what my interpretation
9 is?
10 Q. Well, presumably you could do
11 that.
12 A. I could. If you want me to, I'd
13 be --
14 Q. And you've had experience with the
15 annual report in the past?
16 A. Right.
17 But I don't know what this is
18 referring to without reading the annual
19 report.
20 Q. Sure. I understand.
21 All right. So let's take a look
22 at the document that was previously marked as
23 Exhibit 73.
24 A. 73?
25 Q. Uh-huh.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 global license."
3 Do you see that?
4 **A. I see that, yeah.**
5 Q. Okay. So does this refresh your
6 recollection that in November of 2018 you
7 were asked to determine whether the Chubb ELA
8 was a global ELA?
9 **A. Oh, no, it does not.**
10 Q. Okay.
11 **A. But I could have been asked that**
12 **every year, every other year for five years.**
13 This would have -- just one of the
14 many times I was asked that.
15 Q. Okay.
16 **A. Okay.**
17 Q. Is it a fair assumption from what
18 we've looked at from Exhibits 115, 73, and
19 116 that are all in mid to late November
20 2008, fair to conclude from those that you
21 and your internal FICO team were doing an
22 analysis of whether the ELA was a global ELA?
23 **A. I want to say, yes.**
24 The reason I can't -- I feel like
25 I can't say yes is I haven't seen a lawyer on

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2 here, 'cause it would have went to a lawyer
3 for the ultimate answer, plus there's a
4 contract.
5 Q. Okay. But in terms of at least
6 the business discussion --
7 **A. Right.**
8 Q. -- is it fair to conclude from
9 these documents that you internally were
10 discussing with your business folks whether
11 the ELA was a global ELA?
12 **A. That would be fair. That would be**
13 **a fair conclusion, yes.**
14 Q. Okay. And in doing so you had
15 referenced the annual report, Chubb annual
16 report?
17 **A. Right.**
18 Q. And you received an email from
19 Larry Wachs, who was a part of your pursuit
20 team at the time of the deal, correct?
21 **A. Yeah, I wouldn't describe him that**
22 **way. But, yes, he was on the -- he was on**
23 **the pursuit team. He was not part of my**
24 **team.**
25 So the Blaze guys were very

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 distinct from the sector guys.
3 Q. Okay. Well, Larry and Russ were
4 working --
5 **A. Were working together, right.**
6 Q. Yes.
7 And his position is the corporate
8 ELA was intended to include the global
9 license?
10 **A. That's Larry's position.**
11 Q. Okay. And so at this point then
12 did you conclude that Chubb had in fact
13 purchased a global ELA for Blaze?
14 **A. I don't -- I don't know.**
15 I would be surprised if I did.
16 But maybe I did and then found -- did the
17 rest of the research and found that was
18 wrong. I don't know.
19 Q. Okay. So it's possible --
20 **A. But Larry believes it for sure.**
21 Q. Larry believed it?
22 **A. Russ would have to be convinced.**
23 I don't believe it.
24 Q. Okay. It's possible though that
25 in November of 2008 after doing the analysis

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 that you did in November of 2008 with your
3 internal team that you concluded it was in
4 fact a global ELA?
5 MR. HINDERAKER: Objection, asks
6 for speculation.
7 **A. So what does that mean? Do I**
8 **answer the question?**
9 MR. HINDERAKER: Well, she said it
10 is possible that. And I said I think
11 that's asking --
12 So you can -- you have to answer
13 the question.
14 THE WITNESS: Oh.
15 MR. HINDERAKER: I'm just raising
16 my objection to the question itself.
17 THE WITNESS: So I don't have a
18 judge here to say objection overruled
19 and all that stuff?
20 MR. HINDERAKER: No, there's no --
21 I've lodged my objection to the
22 form.
23 THE WITNESS: So the question is
24 one more time?
25 BY MS. JANUS:

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 Q. You said you couldn't remember.
3 A. Right.
4 Q. And so my question -- my follow-up
5 question to you was it's possible then that
6 in November 2008 after going through an
7 internal analysis of the Chubb ELA you
8 concluded that it was in fact a global ELA?
9 MR. HINDERAKER: And my objection
10 is lack of foundation, asks for
11 speculation.
12 A. But I still answer the question
13 anyway.
14 MR. HINDERAKER: Yes, the best you
15 can.
16 A. Okay. So it's -- I'm sorry, one
17 more time -- is it possible that I concluded
18 that it was a global ELA?
19 I'd state that all things are
20 possible.
21 Is it possible in the moment that
22 with Larry saying yeah, yeah, yeah, yeah,
23 yeah, yeah, I might have said, okay, maybe.
24 And then I would have done the
25 rest of the work to find out what I really

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 thought.
3 So it's possible in a moment, in a
4 flash I might have said, okay, maybe you're
5 right.
6 Q. Okay. Now, presumably these
7 conversations were taking place because Chubb
8 Europe wanted to use Blaze, right?
9 A. Or -- that's one possible --
10 that's one possible reason.
11 Q. Okay. Or FICO --
12 A. -- sell it to --
13 THE COURT REPORTER: Excuse me,
14 excuse me. You need to speak one at a
15 time.
16 So what was the question?
17 Q. Or that FICO Europe wanted to sell
18 Blaze to Chubb Europe, that's another
19 possibility for the reason for the
20 conversation, correct?
21 A. Correct.
22 Q. Do you recall what precipitated
23 the conversation?
24 A. No.
25 Q. In any event, do you recall that a

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 decision was made about what position FICO
3 would take with respect to whether the Chubb
4 Blaze ELA was global?
5 A. Do I recall? No.
6 Q. As you sit here today, do you
7 believe that FICO made the decision to treat
8 the Chubb Blaze ELA as a global ELA?
9 A. No, 'cause we'd have an
10 amendment -- we'd an Amendment Four that said
11 it's global. And we don't have that. Or
12 amendment whatever.
13 Q. Do you believe that FICO
14 allowed -- knowingly allowed Chubb to use the
15 Blaze ELA outside of the United States?
16 A. Knowingly allowed -- how do you
17 mean that?
18 Just -- so I'm wondering, you
19 know, before the fact or after the fact kind
20 of. So do we knowingly say, go ahead and use
21 it?
22 Q. Yeah.
23 A. No.
24 We might have found out about
25 something and said, you know what, don't

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 break the relationship. It's a good
3 customer. It's a small use. Let it go for a
4 while till it becomes important.
5 Q. Okay. So in your view --
6 A. But that would have been -- we'd
7 not --
8 Q. So in your view you don't believe
9 that Chubb ever said to -- I'm sorry, strike
10 that.
11 You don't believe that FICO ever
12 said to Chubb, go ahead and use it in Europe?
13 Is that part correct?
14 A. That is correct.
15 Q. But you think it's possible that
16 FICO knew that Chubb was using it in Europe
17 and made a decision not to take steps to stop
18 Chubb from using it in Europe?
19 MR. HINDERAKER: I'll object to
20 the form of the question as asking for
21 speculation.
22 A. I'm sorry, so I believed -- do I
23 believe that they -- I could have learned
24 that they were using it and said, don't rock
25 the boat, Chubb's a great customer, we love

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 their reference, it's a small use, it's not
3 material? It's possible.
4 That would be something -- that
5 would be a decision I would have made, say
6 don't rock -- it's not material, if it was a
7 minor use for like a concept idea. But,
8 yeah.
9 Q. Okay. And so in that case in your
10 mind you were knowingly allowing Chubb to use
11 the Blaze software outside of the scope of
12 the license?
13 MR. HINDERAKER: Object to the
14 question to the extent it asks for a
15 legal conclusion.
16 Also misstates his prior
17 testimony. You.
18 Can try to answer the question the
19 best you can.
20 A. I'm sorry, give me the question
21 again.
22 Q. In that case you were knowingly
23 allowing Chubb to use the Blaze software
24 outside of the scope of the license?
25 MR. HINDERAKER: Same objections.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 Go ahead.
3 A. I -- knowingly I may have known.
4 I don't know that I know that I
5 knew that I know, you know.
6 Q. It's possible -- you can't recall
7 whether you knew, but it's possible?
8 A. It's possible --
9 MR. HINDERAKER: Objection, asks
10 for speculation. Go ahead.
11 A. It's -- it's --
12 MR. HINDERAKER: Anything is
13 possible. Go ahead.
14 A. Right. It's certainly possible.
15 It's possible I knew that they had
16 some small use and didn't hold them to the
17 letter of the law for a moment.
18 Q. Or the letter of the license?
19 A. That's what I meant, yeah, letter
20 of license, yeah. Or the spirit of the
21 license, quite frankly.
22 (Exhibit 117, Email dated
23 6/3/2009, Bates FICO0003146 through
24 FICO0003147, marked for identification.)
25 Q. I'm showing you what's been marked

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 as Exhibit 117.
3 A. David Taylor.
4 Q. After you've had a chance to look
5 at this, let me know.
6 (Document review.)
7 A. Okay.
8 Q. All right. So if we start at the
9 first in time email, which is on the back --
10 A. Okay. First in time email.
11 Q. That's from David Taylor to Ian
12 Brodie and you --
13 A. Uh-huh.
14 Q. -- and others?
15 Do you think Ian Brodie would have
16 been the client partner for Chubb at this
17 time?
18 A. Yes.
19 Q. Do you know where Ian Brodie is
20 now?
21 A. He's running tattoo removal
22 parlors in Boston.
23 You don't get to say that often,
24 do you? Actually as of two years ago. So I
25 don't know where he is now.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 Q. Okay. And did you say he's
3 running them or --
4 A. Right.
5 Q. Like he actually works in --
6 A. No, he owns -- he owns a string of
7 laser removals. Apparently a very big
8 business.
9 Q. Okay. And in the Boston area?
10 A. I believe so, yes.
11 Q. Okay. To your knowledge, he's not
12 in the industry anymore?
13 A. That's right.
14 Q. Okay. And then David Taylor, who
15 is that? Have we --
16 A. David Taylor would have been an
17 alliance person.
18 Alliance is between -- ACN is
19 Accenture.
20 Q. Okay.
21 A. All right. So we had business
22 relationships with Accenture where we would
23 help them, they would help us.
24 You know, it's an alliance. It's
25 a teaming agreement. So David Taylor and Bob

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 Berini.
3 Q. What line of business is Accenture
4 in?
5 A. Accenture is -- Accenture is in
6 the IT services and outsourcing business.
7 They're like an IBM, except they
8 don't do the hardware side, I guess, or --
9 Q. And so when you say that you would
10 have an alliance or teaming agreement with
11 Accenture, what types of things would you be
12 teaming on?
13 A. Teaming on?
14 Q. Yeah.
15 A. So -- so Accenture probably had
16 a -- has a multibillion dollar consulting
17 practice to the insurance industry.
18 So we would want them to
19 understand how our products work in the
20 insurance business and -- so that they would
21 include our technologies in -- in their
22 consulting work.
23 Q. So Accenture would possibly be a
24 company that could assist a FICO client with
25 the client's use of --

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 A. That's right.
3 Q. -- Blaze or FICO's other software?
4 A. That's right.
5 Q. Okay. It looks like David
6 Taylor's email to you and others relates to
7 the Chubb teaming agreement with Accenture.
8 And in the second paragraph he
9 describes the terms of the agreement.
10 And he says:
11 "The agreement states we will pay
12 Accenture 25 percent for ICC or policy admin
13 driven deals at Chubb on Blaze license sales
14 (not including support and PS)."
15 Then he says in the bottom:
16 "My understanding is Chubb has an
17 existing Blaze ELA, so our opportunity (and
18 fee exposure to ACN) is null on Blaze, but we
19 want to incent them to sell the Blaze product
20 extensions listed above into Chubb."
21 So was Taylor saying that he was
22 entering into an illusory agreement with
23 Accenture with respect to the percent of
24 Blaze license sales Accenture would be
25 entitled to?

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 MR. HINDERAKER: Objection, lack
3 of foundation as to somebody else's
4 intentions.
5 A. But I answer it anyway, okay.
6 What does "illusory" mean?
7 Q. Well, I guess I'm asking you the
8 question. If you don't understand, that's
9 fine. I can say it a different way.
10 But it sounds to me like what
11 Taylor is saying is, yeah, we've entered into
12 an agreement with Accenture for -- to pay
13 them 25 percent for deals at Chubb on Blaze
14 license sales, but we have an existing Blaze
15 ELA, so our fee exposure is null on Blaze.
16 A. Right, so I would have said this
17 is a stupid paragraph.
18 I don't know what "illusory"
19 means, but the guy -- I don't know what he's
20 trying to tell me here. This looks really
21 broken to me.
22 Q. Isn't David Taylor saying, yeah,
23 we got an agreement with Accenture that says
24 Accenture is going to get 25 percent of
25 nothing?

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 A. That's right.
3 Q. Okay.
4 A. That's how I read it as well.
5 Except for the products that he
6 says they get 15 percent on which they don't
7 own. So I don't know why he would even --
8 But that could have been 25
9 percent for all clients who just happened to
10 say "Chubb" here. I don't know -- you know
11 what, who --
12 Q. Well, it's a Chubb team agreement.
13 A. Who knows what he was saying. It
14 doesn't make any sense.
15 Q. And David was a FICO employee,
16 right?
17 A. I believe that's right. I don't
18 think he was a contractor. I think he was a
19 FICO employee, yeah.
20 Q. Was he trying to trick Accenture
21 by getting Accenture to do the deal for fees
22 they would never receive?
23 MR. HINDERAKER: Objection, lack
24 of foundation.
25 That's somebody else's intentions.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 making a decision to say it is -- it is a
3 license that's limited to the United States,
4 but it's not the right time to enforce that?
5 **A. No, but I could have.**
6 **Q. Okay. You just don't recall?**
7 **A. That's right.**
8 **But I wouldn't be -- I would**
9 **consider that I might have done that.**
10 **Q. It's possible?**
11 **A. Sure, yeah.**
12 **Q. All right.**
13 **A. I mean, Chubb was a very favored**
14 **client of mine.**
15 **They were my first customer. They**
16 **were a great reference. I liked them and**
17 **wanted them to be wildly successful.**
18 **So if there was a minor thing, I**
19 **might not have been -- I might not have**
20 **rubbed their noses in it one day.**
21 **Q. Showing you what's been previously**
22 **marked as Deposition Exhibit 47.**
23 **Al, you can just ignore my**
24 **highlighting.**
25 **MR. HINDERAKER: I can probably**

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 find it.
3 **MS. JANUS: Sure, that's fine.**
4 **THE WITNESS: POC, use, all**
5 **right --**
6 **BY MS. JANUS:**
7 **Q. Take a look at this exchange.**
8 **MR. HINDERAKER: Maybe I can't.**
9 **(Document review.)**
10 **A. So here it says -- he's saying**
11 **they do have a global, but he's saying he**
12 **said they don't have a global. All right.**
13 **(Document review.)**
14 **A. Okay.**
15 **Q. Take a look at the second page as**
16 **well.**
17 **(Document review.)**
18 **A. Okay.**
19 **Q. All right. Are you with me?**
20 **A. I'm with you.**
21 **Q. Okay. So in Exhibit 47 the**
22 **earliest email in time is on the second page,**
23 **and it's an email from Richard Hill to you?**
24 **A. Right.**
25 **Q. Dated August 14, 2012, right?**

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 **A. Right.**
3 **Q. And Richard Hill is reaching out**
4 **to you about Chubb. And it says, "Chubb**
5 **(again)."**
6 **Does that refresh your**
7 **recollection that you had had opportunities**
8 **to deal with Chubb and Europe previous to**
9 **2012?**
10 **A. Previous to this email maybe, but,**
11 **no.**
12 **So Richard would probably have**
13 **several conversations about Chubb.**
14 **Q. Yeah.**
15 **A. I just don't know if it was in**
16 **August of '12 or if it was in August of '11.**
17 **But Chubb, he's talking about**
18 **Chubb.**
19 **Q. And one of the meeting planners**
20 **that we looked at from February of 2008**
21 **included Richard Hill, right?**
22 **A. I don't know. Is that what it**
23 **said? I'll trust --**
24 **Q. I think --**
25 **A. It may have. I don't know.**

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 **Q. Deposition Exhibit 73 included**
3 **Richard Hill and said it was a call to**
4 **discuss the Chubb license agreement and plan**
5 **for Chubb Europe?**
6 **A. Okay.**
7 **Q. Okay. So presumably in November**
8 **of 2008 you had discussed with Richard Hill**
9 **the Chubb license and a plan for Chubb**
10 **Europe?**
11 **MR. HINDERAKER: Objection to**
12 **counsel giving testimony.**
13 **MS. JANUS: No, that's not a**
14 **proper objection.**
15 **I'm asking a question.**
16 **MR. HINDERAKER: You know that's**
17 **not a question.**
18 **Presumably you did X and Y is not**
19 **a question. That's a statement of**
20 **argument.**
21 **MS. JANUS: No, it's a proper**
22 **question.**
23 **I'm allowed to take my deposition,**
24 **Al.**
25 **MR. HINDERAKER: You can take it.**

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 I've lodged my objection.
 3 MS. JANUS: Well, it's not a
 4 proper objection.
 5 Keep your objections to within the
 6 rules, please.
 7 BY MS. JANUS:
 8 Q. So presumably in November of 2008
 9 you had discussed with Richard Hill the Chubb
 10 license agreement and a plan for Chubb
 11 Europe, is that a fair statement?
 12 A. Chubb license discussion -- yes,
 13 that's what it says, exactly what it says,
 14 yep.
 15 Q. Okay, all right. And then in 2012
 16 Richard Hill emails you --
 17 A. Four years later, yep.
 18 Q. -- and says, "Chubb U.K. have
 19 started being interested in Blaze (again)"?
 20 A. Right. Okay.
 21 Q. He talks about who the
 22 relationship people are in the middle
 23 paragraph, right, or who they used to be?
 24 A. Right.
 25 Q. And then in the third paragraph he

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 says, "Let me know if anything has changed -
 3 good or bad" --
 4 Are you with me?
 5 A. Yep.
 6 Q. -- "and more importantly whether
 7 we can actually sell anything new here as I
 8 seem to remember their U.S. Blaze license
 9 allowed them the software for free..."?
 10 A. Right.
 11 Q. Okay. So Richard Hill is emailing
 12 to you after that 2008 conversation about a
 13 plan for Blaze in Europe --
 14 A. Right.
 15 Q. -- and saying, is there anything
 16 we can sell in Europe because my recollection
 17 is they get Blaze for free; is that a fair
 18 characterization of his email?
 19 A. That's what Richard says in this
 20 email, that's right.
 21 Q. Okay. And your response is, "They
 22 do have a Blaze ELA"?
 23 A. Uh-huh.
 24 Q. Right?
 25 A. I do say, "They have a Blaze ELA."

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 Yes, I do. Yes, I say that.
 3 Q. You do not say, no, no, no,
 4 Richard, hold on here, you're wrong, go for
 5 it, get a Blaze ELA negotiated for Chubb
 6 Europe?
 7 That is not your response, is it?
 8 A. Right, that is not my response.
 9 Q. So fair to say in 2012 you
 10 understand that Chubb Europe is using Blaze
 11 pursuant to the Chubb ELA, correct?
 12 A. Wrong.
 13 Q. What part of it is wrong?
 14 A. Well, they haven't started using
 15 it because they said they were starting
 16 interested in using it.
 17 So that means they haven't used
 18 it.
 19 And I didn't say they have a
 20 global ELA or they have a -- don't have a
 21 global ELA.
 22 I said, check with Mike Sawyer to
 23 see what the lay of the land is.
 24 Q. You do say, "They have a Blaze
 25 ELA."

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 And you do not say -- his specific
 3 question to you is is there anything to sell
 4 here.
 5 MR. HINDERAKER: Objection,
 6 argumentative, asked and answered.
 7 A. That's -- I asked -- I would say
 8 the same thing I said.
 9 Q. And your answer was --
 10 A. That --
 11 Q. -- you didn't say there was a
 12 Blaze --
 13 A. I didn't say there was or there
 14 wasn't --
 15 Q. Okay, so you just didn't --
 16 A. -- I said you need to check --
 17 THE COURT REPORTER: Wait, wait,
 18 wait, wait.
 19 Okay, what's the question?
 20 Q. So you just didn't answer that
 21 part of the question?
 22 A. I really didn't. I did not. I
 23 said --
 24 Q. All right. Let's look at the
 25 first page.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 A. All right.
 3 Q. So the first page then, the bottom
 4 of the page has an email from Mike Sawyer to
 5 Richard Hill, with a copy to you?
 6 A. Yep.
 7 Q. And Mike says:
 8 "I am the CP for Chubb. They do
 9 have a global ELA for Blaze and have an
 10 automated underwriting application running in
 11 the U.K. already."
 12 You see that?
 13 A. Yeah, yeah, yeah.
 14 Q. Okay. You're on that email?
 15 A. Yeah, yeah, I see it, yeah.
 16 Q. Okay. So at that point why didn't
 17 you say, whoa, whoa, whoa, guys, you got it
 18 all wrong?
 19 A. Well, maybe I didn't read the
 20 email. Maybe I sent it to -- maybe I picked
 21 up the phone and called him.
 22 I don't know.
 23 Q. Wait a second. They've already
 24 got an automated underwriting application
 25 running in the U.K., and you're telling them

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 there's a global ELA for Blaze.
 3 MR. HINDERAKER: Objection.
 4 A. Where am I saying that?
 5 MR. HINDERAKER: That misstates
 6 the testimony.
 7 Q. No, Mr. Sawyer is telling him they
 8 have a global ELA for Blaze.
 9 And you're on the email?
 10 A. Yes, I am.
 11 Q. Okay. Do you think you did
 12 anything in response to this email?
 13 A. I would have picked up the phone.
 14 Q. Okay. Called -- called Mike
 15 Sawyer?
 16 A. Uh-huh, or Richard or lawyers
 17 or -- yeah.
 18 Q. And do you recall doing anything
 19 in response to this email?
 20 A. I didn't recall the email until
 21 you showed it to me. So, no.
 22 Q. Okay. Well, now that you've seen
 23 it -- sometimes that refreshes peoples'
 24 recollections.
 25 A. Uh-huh.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 Q. Based on your prior testimony
 3 today it seems to me that you would have, you
 4 know --
 5 A. So it's conceivable this is when I
 6 learned they had something running in the
 7 U.K.
 8 Q. Okay. So it's conceivable --
 9 A. That's conceivable that --
 10 Q. -- that you learned that they had
 11 an automated underwriting application running
 12 in the U.K. already in 2012, right?
 13 A. It's conceivable that I learned
 14 that this day or whenever I got this email.
 15 It could have been three weeks later,
 16 whenever I got it.
 17 Q. And you chose not to respond to
 18 prevent Chubb in Europe from using Blaze,
 19 correct?
 20 A. I don't know. It's conceivable.
 21 Q. You think you did respond by
 22 preventing Chubb in Europe from using Blaze?
 23 MR. HINDERAKER: Objection,
 24 argumentative, also asked and answered.
 25 MS. JANUS: It's not.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 MR. HINDERAKER: Yes, it has.
 3 Go ahead. My objection is there.
 4 We can move on faster if I lodge
 5 my objection.
 6 He's going to answer your question
 7 as best he can.
 8 MS. JANUS: Well, I'm okay with
 9 proper objections, AI. I'm okay with
 10 proper objections. It wasn't
 11 argumentative.
 12 I'm entitled to take my
 13 deposition.
 14 That you're not happy with it
 15 doesn't mean you can issue improper
 16 objections.
 17 The rules are the rules.
 18 BY MS. JANUS:
 19 Q. Please answer the question.
 20 A. Could you please state it again
 21 without --
 22 Q. Yeah. I said you did not take any
 23 action in response to Exhibit 47 to prevent
 24 Chubb in Europe from using Blaze, is that
 25 correct?

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 presumably you can make your expanded use?
 3 MR. HINDERAKER: Objection,
 4 mischaracterizes the document.
 5 Counsel says it's a sentence.
 6 It's not.
 7 Counsel's argumentative
 8 interpretation of the document.
 9 MS. JANUS: Improper objections,
 10 Al.
 11 Go ahead.
 12 MR. HINDERAKER: It's improper to
 13 be unfair to the witness and
 14 mischaracterize the document by
 15 redrafting it.
 16 MS. JANUS: I'm not being unfair.
 17 I'm asking fair questions and
 18 trying to create my record.
 19 THE WITNESS: So I think we just
 20 read it very differently. I do.
 21 So to me, right now you've got a
 22 change in ownership, which is a problem.
 23 If we would have sat together well
 24 in advance of the change of ownership
 25 and said here's some use and I've got

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 this much revenue going through it, you
 3 told me what you were doing beforehand,
 4 we could have managed our way through
 5 it.
 6 You could have said, oh, if you
 7 want to pay no fee, we can create an
 8 entity to do that.
 9 But by not doing any of those
 10 things, at that the point, 'cause we had
 11 no insight into what the plans were, at
 12 that point -- and this could happen in
 13 any company, right?
 14 If you don't tell me what you're
 15 doing, or whoever is at FICO that day,
 16 what's going on, then you've just got to
 17 lock it down until we either terminate
 18 it or we renegotiate something.
 19 That's what "expanded use" means
 20 to me.
 21 BY MS. JANUS:
 22 Q. You agree that there was an
 23 obligation on the part of FICO to not
 24 unreasonably withhold its consent to
 25 transfer?

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 A. That's right. That's what it says
 3 right here, right.
 4 And I also agree -- like you said,
 5 right. But "unreasonable" would have
 6 happened before the fact.
 7 Q. You said that Chubb had not
 8 reached out to FICO.
 9 What language in this provision
 10 requires Chubb to reach out to FICO?
 11 A. I have this one -- I'll have to go
 12 back to the whole document, if you want to go
 13 through that.
 14 But right here, by definition,
 15 they had an obligation to tell us before the
 16 deal closed. By definition, right?
 17 By definition in the event of a
 18 change of control.
 19 Well, what it was like -- January
 20 1 there was a change of control event, so --
 21 Q. But do you see anything in -- I
 22 understand you're not looking at the whole
 23 agreement right now, but do you see anything
 24 in this provision that we're looking at that
 25 requires Chubb to reach out to FICO to obtain

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 consent versus FICO initiating the
 3 conversation?
 4 A. Yeah. So I view -- I view this as
 5 an attempt to transfer the agreement without
 6 our -- without first obtaining some written
 7 consent.
 8 That's how I view what happened,
 9 the last bit.
 10 Right here it says:
 11 "Any attempt to assign or
 12 transfer...without first obtaining...will be
 13 void and of no force or effect," which means
 14 you lost your license that day.
 15 You had no license at that point
 16 in my mind.
 17 Q. Now, FICO knew about the
 18 transaction that was scheduled to take place
 19 in January of 2016 back in July of 2015,
 20 right?
 21 A. July 1st.
 22 Q. Showing you what's been marked
 23 as --
 24 A. 123.
 25 Q. -- Exhibit 123.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 (Exhibit 123, Email chain, Bates
 3 FICO0001698 through FICO0001701, marked
 4 for identification.)
 5 Q. Take a look at this email
 6 exchange, and let me know --
 7 A. 123, there you go.
 8 (Document review.)
 9 A. Okay.
 10 Q. So this is an email exchange
 11 between you and Mike Sawyer --
 12 A. Yep.
 13 Q. -- in October of 2015, right?
 14 A. Yep.
 15 Q. The first portion of the email
 16 is -- contains the email we were looking at
 17 in 122.
 18 A. Uh-huh.
 19 Q. Your response to Mr. Sawyer's
 20 email on October 7 is:
 21 "The unreasonably withheld bit has
 22 me a little concerned so it may come down to
 23 a 'how did we size' the enterprise
 24 discussion"?
 25 A. Yep.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 Q. So you had some concern about that
 3 language we looked at, that such written
 4 consent will not be unreasonably withheld?
 5 A. Uh-huh.
 6 Q. Yes?
 7 A. Yes. I say right here, yes, has
 8 me concerned, yeah.
 9 Q. What?
 10 A. I say right here, "unreasonably
 11 withheld...has me a little concerned," yes.
 12 Q. And that's because you understood
 13 that FICO had an obligation to not
 14 unreasonably withhold its consent, correct?
 15 A. Yeah, there were two things that
 16 had me worried about this.
 17 And, again, this is like in modern
 18 days. So I kind of remember this one. It's
 19 kind of nice.
 20 There were two things.
 21 One, that "unreasonably withheld"
 22 is not a defined term.
 23 So in a contract, if I have a term
 24 like that, it's not defined, then I kind
 25 of -- I get antsy.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 So that would have been the first
 3 thing.
 4 The next bit was literally, you
 5 know, how do we size it.
 6 So we sized it on a \$12 billion
 7 deal. And now it got acquired by a \$23
 8 billion entity. So it's now up to a 35
 9 billion company.
 10 So the lack of a defined what is
 11 "unreasonably withheld" would have caused me
 12 to pause.
 13 Q. Okay, yep.
 14 A. But that would been it.
 15 Q. And, by the way -- so the deal --
 16 the enterprise deal was sized on
 17 \$12.3 billion of --
 18 A. Sounds about right.
 19 Q. -- premium revenue, right?
 20 Do you recall whether that
 21 12.3 billion, in terms of sizing the original
 22 deal, included Chubb's global revenues?
 23 A. I don't. I don't.
 24 Q. If it did, do you agree with me
 25 that that counts as in favor of an

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 interpretation of the ELA as being a global
 3 ELA?
 4 MR. HINDERAKER: Objection, asks
 5 for a legal conclusion.
 6 A. I'm allowed to answer that, right?
 7 Q. Yes, you can answer that.
 8 A. Right, so I agree that there's
 9 some things here that would lend one to think
 10 there's a global, but at the end of the day
 11 the agreements rule. And the agreements were
 12 not a global.
 13 Q. And you're -- we're going to look
 14 at the language of the agreement, but I take
 15 it what you're referring to is some language
 16 in the actual agreement?
 17 A. Right, in the Exhibits 110 -- 110
 18 it was, right? It had the original agreement
 19 and then Amendment One, Amendment Two, right.
 20 Q. Okay. All right. Then Mike
 21 Sawyer responds to you and says, "I am not as
 22 concerned about it."
 23 He talks about this size in
 24 revenue issue that you pointed out.
 25 And he says, "Our pricing model is

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 based on" -- is that gross written premium,
 3 "GWP"?
 4 A. Yes, it is.
 5 Q. "So I would think that tripling
 6 the size of GWP by acquisition should be
 7 significant."
 8 And then you respond, "Is the
 9 license specifically tied to GWP?"
 10 Does your question indicate that
 11 you think the argument would be stronger to
 12 increase the licensing revenues if the
 13 license specifically tied to GWP?
 14 A. No. I was just wondering is it in
 15 the contract. Does it say based on GWP, you
 16 know. It was a simple question.
 17 Q. What would the significance of
 18 that have been to you?
 19 A. Then it would have been clear. It
 20 would have been clearly stated, the same way
 21 the definition of "unreasonably withheld"
 22 would be helpful if it was clearly stated.
 23 Q. Okay. And so the fact that the
 24 contract was not specifically tied to GWP
 25 made that less clear for you?

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 A. It meant it just wasn't documented
 3 in the -- so I -- one less piece of fact that
 4 I had, one less -- one less fact I had in
 5 writing.
 6 Q. What is -- at the bottom of the
 7 first page of Exhibit 123 Sawyer says, "Do
 8 you have any of the proposal information?"
 9 Do you see that?
 10 A. I do.
 11 Q. Do you know what he's talking
 12 about, what is "proposal information" in this
 13 context?
 14 MR. HINDERAKER: I object to
 15 testimony about Sawyer's intentions.
 16 Q. I'm not asking for his intention.
 17 I'm just simply asking you as a
 18 member of the same business whether you know
 19 what would be referred to as "proposal
 20 information" in connection with the beginning
 21 of a license.
 22 MR. HINDERAKER: I understand that
 23 to be a different question.
 24 A. So I believe, as I said in my
 25 response, I could dig up the proposal, which

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 has -- which determines how we priced --
 3 there would have been information about how
 4 we priced the original licenses, the May 6,
 5 August 6, and December 2006.
 6 Q. June of '06?
 7 A. Did I say May?
 8 Yeah, June, right.
 9 Q. And is that some of the
 10 information we looked at earlier today?
 11 A. I have not seen it in our -- I
 12 have not seen it here today.
 13 Q. Okay. And so can you just
 14 describe what that document would be like?
 15 So that -- because I would like
 16 to -- if I haven't -- if it hasn't been
 17 produced in the lawsuit, I'd like for it to
 18 be produced. And I want to know how to
 19 describe what it would look like.
 20 A. Right. So if it hasn't been
 21 produced, I suspect it doesn't longer exist.
 22 But it would have a little
 23 preamble. It would describe the situation
 24 that we're in, what problem are we solving,
 25 the original CSI renewal project.

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
 2 It would been a PowerPoint.
 3 There would actually be two
 4 documents.
 5 One would be the written proposal
 6 in response to the RFP, which Chubb should
 7 have that.
 8 You know, FICO is not the best
 9 knowledge management shop, because as of 2010
 10 we've gone through several upgrades in
 11 systems.
 12 But there was a written proposal
 13 in response the RFP -- RFI rather, RFI.
 14 And then we have a sales deck
 15 which we went out and I presented. Larry
 16 Wachs was with me.
 17 And there would be a sales deck
 18 that talked about how we priced it, what the
 19 scope was.
 20 So that would be the original
 21 proposal.
 22 And I'm sure I had it before I
 23 left FICO. But that was two laptops ago,
 24 so -- maybe three laptops ago, right.
 25 'Cause I -- when I left in '08, I

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Russell Schreiber - CONFIDENTIAL - ATTORNEYS' EYES ONLY - 10/24/2018
Fair Isaac Corporation vs. Federal Insurance Company, et al.

1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 might have -- I left in '07, I might have
3 lost it on that laptop, 'cause I turned in
4 the laptop -- actually I had a hiatus, right,
5 yeah.
6 Q. So would it be on though like a
7 server or --
8 A. It's possible. I don't know.
9 Like wherever they backed up my
10 server in 2006, right?
11 Q. Okay.
12 A. And I just don't know.
13 If they didn't give it to you,
14 then I'm sure they don't have it or it's
15 confidential, so --
16 Q. Did we already talk about where
17 Larry Wachs is?
18 A. We talked and I haven't -- I don't
19 know, yeah.
20 Q. Okay. But he was based in New
21 York as well?
22 A. Right.
23 Q. Okay. Okay, and then Mike Sawyer
24 gets back to you finally and says, "I don't
25 see anything on gross written premium in the

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 agreements," right?
3 A. Right, right, which we saw
4 already, yes.
5 Q. Do you recall then what happened
6 after this exchange in October of 2015?
7 A. So I can tell you I was becoming
8 less and less comfortable that we had not
9 heard from Chubb about this.
10 Because I would have thought --
11 you know, before I was at FICO I was a -- I
12 was a consulting partner. And we would --
13 these kind of situations, we make sure we
14 reach out to the vendors. There's a whole
15 sourcing strategy.
16 I was really becoming
17 uncomfortable that no one had reached out to
18 us as one of the vendors that a contract
19 needed to be resolved, which should have been
20 on someone's list and worked through.
21 So at that point the fact that we
22 hadn't been contacted, I started pushing Mike
23 to contact them.
24 Q. Okay. Do you recall when that
25 was?

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 A. I don't. But I know by December I
3 was really -- the alarm signals were -- were
4 blaring.
5 So it might have been December
6 before we actually made contact with
7 somebody.
8 Q. And during this time -- you know,
9 we looked at October 2015, November 2015,
10 September 2015 -- it was business as usual
11 between Chubb and FICO?
12 A. We weren't really doing anything
13 though. We weren't --
14 Q. You were doing quite a bit, I
15 think, weren't you?
16 You were doing Chubb app studio,
17 professional services scoping.
18 There have been voluminous emails
19 provided in the lawsuit relating to work that
20 FICO was doing with Chubb.
21 MR. HINDERAKER: That's counsel's
22 representation.
23 A. I don't remember us doing work
24 with FICO -- with Chubb the second half of
25 calendar year '15, or even actually at all in

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1 CONFIDENTIAL - ATTORNEYS' EYES ONLY - Schreiber
2 calendar year '15.
3 So we could have been doing little
4 bits, but we certainly were not having the
5 interactions we had three years before that.
6 Q. Here's an example of some of the
7 things that were being talked about, Exhibit
8 124.
9 (Exhibit 124, Email dated October
10 7, 2015, Bates FICO0002507 through
11 FICO0002508, marked for identification.)
12 (Document review.)
13 A. Okay.
14 Q. Does that refresh your
15 recollection that there was activity
16 happening with Chubb during this time?
17 A. This is something that -- one, it
18 was a sales pitch. This is something that
19 was not acquired.
20 It was a sales pitch to Henry, who
21 was pretty far down in the food chain, to buy
22 a little piece of software, a very specific
23 and narrow use. So this would be consistent.
24 And they didn't buy it.
25 So Henry asked for a price. We

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